IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.MC.No. 2995 of 2007()

CC.NO.667/03 OF Judicial Magistrate of the First Class-V, KOZHIKODE

PETITIONER:

K.T.MUHAMMED, S/O.MOIDEEN, AGED 36
YEARS, PALLIPURAT VEEDU, CHERUKAVU AMSOM,
PYNGOTTU DESOM, KOZHIKODE DISTRICT.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2995 of 2007

Dated this the 27th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution for the offences punishable, inter alia, under Section 324 r/w 149 I.P.C. All the offences alleged are bailable. The crime was registered as early as in 1997. Investigation was complete. Final report was filed and cognizance was taken by the learned Magistrate. The case was registered as C.C.866 of 1997. The petitioner was not available for trial. The co-accused were found not guilty and acquitted. The case against the petitioner and some other accused was split up and refiled as C.C.No.667/2003. The petitioner has not appeared before the learned Magistrate so far. Coercive processes have been issued by the learned Magistrate against the petitioner to secure his presence. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful. He is willing to surrender before the learned Magistrate and seek bail. But he apprehends that his application for regular bail may not be considered by the learned

Magistrate on merit, in accordance with law and expeditiously. In these circumstances, the petitioner prays that directions under Section 438 and/or 482 Cr.P.C may be issued in his favour.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the jurisdiction under Section 438 and/or 482 Cr.P.C, submits the learned Public Prosecutor. The petitioner, who has been absconding all along, must surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not

consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

7. The petitioner in the petition makes a further request that there may be a direction for expeditious disposal of the case. It isfor the petitioner to first appear before the learned Magistrate and thereafter he can certainly request the learned Magistrate for expeditious disposal. The learned Magistrate, needless to say, must consider such prayer for expeditious disposal also on merits and in accordance with law.

(R.BASANT, JUDGE)

rtr/-